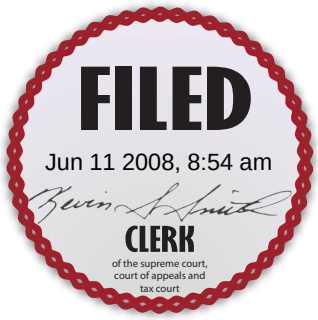

ATTORNEY FOR APPELLANTS:

DIANE RAE HURTT
Law Office of Diane Rae Hurtt, P.C.
Lafayette, Indiana

ATTORNEY FOR APPELLEE:

CRAIG JONES
Lafayette, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.W., child, BRIAN WILLIAMSON, father and DANIELLE JOHNSON, mother,	)	
DANIELLE JOHNSON and, BRIAN WILLIAMSON,	)	
Appellants,	)	
vs.	)	No. 79A02-0712-JV-1015
STATE OF INDIANA,	)	
Appellee.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Gregg Theobald, Judge
Cause No. 79D03-0703-JT-70
79D03-0703-JT-71

June 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Danielle Johnson and Brian Williamson appeal the involuntary termination of their parental rights, in Tippecanoe Superior Court, to their daughter, C.W. We affirm.

Issue

The parents raise several issues on appeal, which we consolidate and restate as whether the trial court's judgment terminating Johnson's and Williamson's parental rights is supported by clear and convincing evidence.

Facts

Johnson and Williamson are the biological parents of C.W., born on July 19, 2004. The facts most favorable to the trial court's judgment reveal that on November 22, 2005, the Tippecanoe County Department of Child Services ("TCDCS") received a referral alleging Johnson and C.W. were homeless and that Johnson was using cocaine and methamphetamines. This was not Johnson's first contact with the TCDCS. In 2001 and 2002, Johnson's two older children were determined to be CHINS and were eventually removed from her care and placed with their respective biological fathers. The TCDCS had also received another referral pertaining to C.W. in August 2005. No legal action was taken as a result of the August referral, but Johnson and Williamson did not cooperate with the TCDCS's investigation.

Upon receiving the November referral, intake caseworker Christopher Reynolds initiated another investigation. However, Reynolds was unable to locate Johnson and C.W. for more than two months, despite Reynolds's contact with Williamson, who was in work release at the time due to pending drug-related charges. Eventually, Reynolds received an anonymous tip that Johnson and C.W. were "hiding out" at the home of Torri Biddle. Tr. p. 52. Consequently, on January 27, 2006, Reynolds went to Biddle's home in an attempt to locate Johnson and C.W.

Biddle initially gave Reyonlds "the run around" by refusing to give Reynolds access to the house and denying that Johnson and C.W. were inside. Id. at 53. However, after approximately twenty minutes, Johnson came to the door. Johnson remained uncooperative and refused to let Reynolds see C.W. Eventually, with the help of officers from the Sheriff's Department and a court order, Reynolds was able to take C.W. into protective custody.

A detention hearing was held on January 31, 2006, and the trial court found there was probable cause to believe that C.W. was a child in need of services ("CHINS"). The TCDCS immediately thereafter filed a CHINS petition and the initial hearing was held. On April 24, 2006, the trial court conducted a fact-finding hearing on the CHINS petition. Both parents were present and represented by counsel. The trial court thereafter adjudicated C.W. to be a CHINS.

The trial court issued a parental participation decree ordering Johnson and Williamson to participate in a variety of services in order to achieve reunification with C.W., including, but not limited to, parenting classes, psychological evaluations and all

resulting recommendations, drug and alcohol evaluations, couples counseling, and home-based services. The parents were also ordered to find and maintain suitable housing and legal employment sufficient to support the family, and to exercise regular visitation with C.W. Additionally, Johnson was ordered to obtain her G.E.D. and attend Women's Empowerment group. Williamson was also ordered to work with the Assertive Community Treatment ("ACT") team, to obtain psychiatric and neurological evaluations, to take all prescription medication as directed by his physicians, and to complete substance abuse counseling in light of his significant history of substance abuse, which began in his teenage years, and his mental illness.[1]

On March 12, 2007, the TCDCS filed a petition to involuntarily terminate Johnson's and Williamson's parental rights to C.W. A hearing on the termination petition was held on September 11, 2007. Following the termination hearing, the trial court took the matter under advisement and on September 17, 2007, the trial court issued its judgment terminating both Johnson's and Williamson's parental rights to C.W. This consolidated appeal ensued.

Analysis

Initially, we note our standard of review. This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses.

[1] Williamson was diagnosed as being Bipolar.

In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. Thus, if the evidence and inferences therefrom support the trial court's decision, we must affirm. Id.

In the present case, the trial court concluded that the elements set forth in Indiana Code Section 31-35-2-4(b)(2) were satisfied, but it did not issue specific findings. Therefore, the judgment is general in nature. When the trial court makes no specific findings, but instead enters a general judgment, it should be affirmed upon any theory supported by the evidence. Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), trans. denied.

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * * * *

(B) there is a reasonable probability that:
(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Johnson and Williamson contend on appeal that the TCDCS did not present sufficient evidence to demonstrate: (1) that a reasonable probability exists that the conditions resulting in the removal of C.W. will not be remedied or that continuation of the parent-child relationships pose a threat to C.W.'s well-being; and, (2) that termination of Johnson's and Williamson's parental relationship with C.W. is in C.W.'s best interests.

1. Conditions Will Not Be Remedied

On appeal, Johnson and Williamson claim that the "conditions resulting in the removal of [C.W.] have been remedied." Appellants' Br. p. 7. Specifically, they state that C.W. was initially removed because she and Johnson were homeless, but by the time of the termination hearing, the parents had lived in the same apartment for more than one year.

Johnson and Williamson further assert that despite reports that Johnson had used illegal drugs prior to C.W.'s removal, "at no time did she have a positive drug screen." Id.

Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, it requires the trial court to find only one of the two requirements of subparagraph (B) by clear and convincing evidence. In re D.L., 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), trans. denied. Accordingly, we shall first consider whether the trial court's determination that there is a reasonable probability the conditions resulting in C.W.'s removal from her parents' care will not be remedied is supported by clear and convincing evidence.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The TCDCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." In re Kay. L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

After determining C.W. was a CHINS, the trial court ordered Johnson and Williamson to participate in and successfully complete various services in order to achieve reunification with C.W. Unfortunately, our review of the record reveals that these conditions either had not been completed by the time of the termination hearing, or they

had been completed, but the parents were unable to successfully demonstrate the skills they had been taught.

Court Appointed Special Advocate Sharon Cornell testified that she recommended termination of both parents' rights to C.W. On cross-examination, Cornell was asked:

> [A]s you look at this case on paper it feels very different than when we talk to you . . . . It just doesn't have the smoking gun negatives[.] [T]he parents did attend couples counseling with maybe a glitch here and there[,] but basically they did a good job at it. [Williamson] has worked with the ACT Team pretty consistently throughout; he's had again some hick-ups (sic) here and there, but nothing . . . nothing jumps out. They completed a parenting class, they did CA/RE group in a timely fashion, they did their psychological assessments, and they did their substance abuse assessments in a timely fashion. So what is it that might be missing?

Tr. pp. 266-67. Cornell responded, "I think one big issue on my part is what they did learn at couples counseling and what they did learn while they were going to individual counseling. I don't see that being translated into their interactions with each other and [C.W.]." Id. at 267. Cornell went on to testify, "I don't see consistency long term on anything [the parents] have learned or that they say they're committed to. A good example is [Johnson's] GED." Id. at 268. Cornell explained that since "day one[,]" Johnson had been telling her that she was going to get her GED, but there was always an excuse for Johnson to never actually take the test. Id. Cornell further stated that Johnson's inability to follow through was a "recurring theme throughout this [case]." Id. at 269.

These sentiments pertaining to the parents' inability to either successfully complete or benefit from services were echoed in the testimony of TCDCS caseworker Christine Huck. At the termination hearing, Huck acknowledged that both parents were initially compliant with participating in services, but that their initial service provider eventually

terminated them from services because of their "lack of motivation and their unwillingness to accept responsibility and [to] change." Id. at 74. When asked if she had an opinion as to whether the parents "are likely to be able to correct the problems that led to [C.W.'s] removal in the first place[,]" Huck responded, "I don't believe that they can, no." Id. at 115.

When questioned whether Johnson's and Williamson's interaction as a couple "showed improvement over the year that she worked with them[,]" Families United counselor Trisha McGowen Switzer, replied, "No. It's very on and off. For several weeks there would be no arguing, just little normal relationship bickers but no big fights and then they'll have one. And so it's very up and down . . . ." Id. at 196. Switzer further testified that she saw no substantial change or improvement with Johnson's ability or willingness to obtain employment, take responsibility for her contribution to the problems in the home, or to deal with financial issues. Likewise, she saw no improvement in Williamson's ability to "face the world" and complete services. Id. at 197. Switzer further indicated that she felt there was no service left that she could offer the parents in order to assist them that had not already been offered to them during the year she had worked with them.

In sum, despite having complied with several of the trial court's orders, including obtaining appropriate housing, completing parenting assessments and classes, as well as participating in couples counseling and individual therapy, the evidence reveals that both parents failed to receive any significant benefit from participating in these services. Moreover, by the time of the termination hearing, Johnson had still not obtained her GED, had only recently obtained employment, had been kicked out of the Women's

Empowerment group, and had ceased going to individual counseling. Similarly, although Williamson had recently enrolled in classes at Ivy Tech, at the time of the termination hearing, Williamson had become addicted to and was abusing his prescription medications, had still not completed court-ordered community services stemming from his criminal conviction, was unemployed, and was not consistently meeting with his counselor or ACT Team casemanager.

Based on the foregoing, we conclude that clear and convincing evidence supports the trial court's determination that there is a reasonable probability that the conditions resulting in C.W.'s removal and continued placement outside the family home will not be remedied. A trial court need not wait until a child is "irreversibly influenced" such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F.v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. Under the facts of this case, it is unfair to ask C.W. to continue to wait until her parents are able to complete, and benefit from, the help that they need. The approximately two years that have already passed is long enough. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them).[2]

2. Best Interests

[2] Having determined the trial court's conclusion regarding the remedy of conditions is supported by clear and convincing evidence, we need not address whether the TCDCS proved that continuation of the parent-child relationships pose a threat to C.W.'s well-being. See D.L., 814 N.E.2d at 1027.

Next we address Johnson's and Williamson's claims that termination of their parental rights is not in C.W.'s best interests. In making this allegation, the parents state that they "love their daughter and [C.W.] loves them." Appellants' Br. p. 20. They further assert that they are both bonded with C.W. and that they have "actively participated in their services" and have "worked to implement what they have learned in their lives and the care of their daughter." Id.

We are mindful that in determining what is in the best interests of the child, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the children. Id. In addition, we have previously determined that the recommendations of the caseworker and CASA that parental rights be terminated support a finding that termination is in the child's best interest. Id.

Because of the lack of specific findings or elaboration in the trial court's judgment, we do not know upon which evidence the trial court relied when reaching its conclusion that termination of both Johnson's and Williamson's parental rights is in C.W.'s best interests. However, in addition to failing to remedy the conditions that resulted in C.W.'s placement outside the family home, the record reveals that both the CASA and TCDCS caseworker recommended termination of Johnson's and Williamson's parental rights to C.W. CASA Cornell testified that she did not feel C.W. would be "a successful child" if returned to the parents' home. Tr. p. 264. In so doing, Cornell stated, "Even after

completing the parenting classes . . . I didn't see significant improvement or changes" in the parents' ability to properly care for C.W. Id. at 262. Cornell went on to state that "given all the services that were offered and even the ones that were completed[,] I had to attribute [the parents' lack of progress] to either lack of motivation or lack of applying what they had learned." Id. Likewise, Caseworker Huck testified that she did not believe that the parents are "likely able to correct the problems that led to [C.W.'s] removal" and she therefore believed termination was in C.W.'s best interest. Id. at 115-116.

Based on the totality of the evidence, we conclude that the trial court's determination that termination was in C.W.'s best interests is supported by clear and convincing evidence. See In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that the testimony of the CASA and the family case manager, coupled with the evidence that the conditions resulting in the continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence that termination is in the child's best interest), trans. denied.

Conclusion

Johnson and Williamson have failed to comply with and benefit from a number of dispositional goals put into place during the CHINS proceedings. While Johnson and Williamson may have a sincere desire to be reunited with their daughter, they have been either unable or unwilling to provide C.W. with a stable home environment. The trial court's judgment terminating Johnson's and Williamson's parental rights to C.W. is supported by clear and convincing evidence. The judgment is therefore affirmed.

Affirmed.

CRONE, J., and BRADFORD, J., concur.